THE HON'BLE MS JUSTICE G. ROHINI

WRIT PETITION NO.23341 of 2004

Dated 24-10-2005

Between:

M. V. Prakash. ….Petitioner

and

The Commissioner, Civil Supplies & Ex Officio Secretary, Govt. of A.P., Hyderabad, and two others.

….Respondents

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ORDER:

The petitioner was appointed as a Dealer of Fair Price Shop No.948, Manikeswari Nagar, Hyderabad, long back. It appears that on 21-01-2004, the Assistant Supply Officer, Circle IX along with Tahsildar (Enforcement) intercepted one Auto bearing No. AP 11 W 1993 which was carrying 20 bags (10 quintals) of rice under release order dated 19-01-2004 pertaining to fair price shop No.948. When questioned, the auto driver has stated that the said stocks were loaded from M.L.S. point R.T.C. X Roads by the petitioner and that he had directed to carry the stocks to Manikeshwarnagar. However, as the main road was closed, he came to Moulali through Taranaka. Since the statement of the auto driver was not found to be satisfactory, it was *prima facie* opined that the petitioner who was the dealer of the Fair Price Shop No.948, in connivance with the auto driver, indulged in clandestine business by diverting PDS rice into black market. Accordingly, ten quintals of rice found in the auto was seized and proceedings were initiated under Section 6-A of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act'), for confiscation of the same. That apart the third respondent-District Supply Officer having issued a show-cause notice dated 01-07-2004 calling upon the petitioner to explain the alleged diversion of PDS rice into black market, cancelled the authorization of the petitioner by proceedings dated 25-06-2004. Aggrieved by the same, the petitioner preferred an appeal before the second respondent-Chief Rationing Officer, Hyderabad. The said appeal was dismissed by proceedings dated 16-09-2004 holding that the petitioner has not taken care for proper transportation of PDS rice and has carelessly handed over the PDS rice to an unauthorized person i.e., auto rickshaw driver. Questioning the same, the petitioner preferred a revision petition before the first respondent-Commissioner of Civil Supplies, Government of A.P., Hyderabad, which was also dismissed

by proceedings dated 25-11-2004. Hence, this writ petition questioning the above said orders passed by the respondents 1 to 3.

I have heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies appearing for the respondents.

The specific case of the petitioner is that on 19-01-2004, he had indented 12 quintals of BPL rice and received the same under release order No.55043 dated 19-01-2004. However, due to break down of the vehicle of the transporter, he had to engage a private auto trolley to transport the indented stock. It is also stated that the driver was not familiar with the route leading to the shop of the petitioner in Manikeshwari Nagar and since the road in Sitaphalmandi was closed, he went astray and lost his way. When the petitioner asked him to come to Taranaka, he proceeded towards Moulali and stopped at Hanumannagar, at which place the vehicle was intercepted and the stock was seized by the Assistant Supply Officer along with the Deputy Tahsildar (Enforcement) alleging that the PDS rice was being diverted into black market. It is the further case of the petitioner that though the Fair Price Shop-in-question was inspected, except some marginal variations in rice and wheat, nothing incriminating was found to substantiate the alleged diversion of PDS rice into black market. Thus, the petitioner pleaded that the allegations of diversion into black market was without any basis and the diversion of route was only due to the fact that the driver of the auto was not well versed with the routes and lost his way.

At the outset, it is to be noted that though the petitioner has admittedly submitted a detailed explanation dated 23-06-2004 to the show-cause notice dated 16-06-2004, the third respondent failed to take into consideration the same and passed the impugned order of cancellation without recording any finding as to the correctness of the allegations against the petitioner. The said order lacks any reasons while holding that the authorization of the petitioner is liable to be cancelled. In the appeal preferred against the said order of

cancellation, the second respondent, who is the appellate authority, observed that the appellant has not taken care for proper transportation of PDS rice and he has carelessly handed over the PDS rice to an unauthorized and unknown person i.e., Auto rickshaw driver and that it is a serious lapse on the part of authorized dealer.

However, there was no finding as such that the petitioner had indulged in the alleged diversion of the PDS rice into black market deliberately. Even in the order of the first respondent, dated 25-11-2004, no specific finding has been recorded as to the correctness of the allegations made against the petitioner.

On a perusal of the orders referred to above, I find force in the contention of the learned counsel for the petitioner that the same have been passed without application of mind to the explanation offered by the petitioner. Particularly in the absence of a specific finding that the petitioner has deliberately indulged in the alleged diversion of PDS rice into black market, I am of the view that the impugned orders of cancellation cannot be justified and that the matter requires reconsideration by the third respondent having due regard to the explanation offered by the petitioner.

Accordingly, the impugned orders dated 25-06-2004, 16-09-2004 and 25-11-2004 are set aside and the matter is remitted back to the third respondent-District Supply Officer for consideration afresh in the light of the observations made above and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is accordingly disposed of. No costs.

(G. ROHINI, J)

Date:24-10-2005

ghn